

DEPARTMENT OF JUSTICE (DOJ) -- FALL 2023

Statement of Regulatory Priorities

The mission of the Department of Justice is to uphold the rule of law, to keep our country safe, and to protect civil rights. In carrying out this mission, the Department is guided by the core values of integrity, fairness, and commitment to promoting the impartial administration of justice—including for those in historically underserved, vulnerable, or marginalized communities.

Consistent with its mission and values, the Department is prioritizing activities that protect the public against foreign and domestic threats, strengthen enforcement of civil rights laws, defend against domestic and international terrorism, combat gun violence, prevent and control crime, and reform criminal justice systems. Because the Department of Justice is primarily a law enforcement agency, not a regulatory agency, it carries out its principal investigative, prosecutorial, and other enforcement activities through means other than the regulatory process.

Regulatory action is, however, a significant aspect of the law enforcement mission of the Department. The regulatory priorities of the Department include initiatives in the areas of criminal justice reform, immigration, civil rights, and gun violence reduction, and are effectuated through rulemaking by the various components of the Department. These initiatives, as well as others important to components' accomplishing key law enforcement priorities, are summarized below.

In addition to the public participation and outreach efforts of the Department described below in the Civil Rights Division section, the Abstracts of various Justice rulemakings also include descriptions of the Department's efforts in these areas including: 1105-AB69 "OVW Special Tribal Criminal Jurisdiction Reimbursement"; 1105-AB40 "Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have not had a Prior In- Person Medical Evaluation"; 1117-AB60 "Providing Controlled Substances to Ocean Vessels"; 1117-AB63 "Termination of Registration Upon Discontinuation of Business or Change of Ownership"; 1117-AB69 "Operation of Automated Dispensing Systems at Long Term Care Facilities by Hospital/Clinic Pharmacies"; 1117-AB72 "Changes to a Prescription"; 1120-AB05 "District of

Columbia Educational Good Time Credit”; 1120-AB67 “Use of Chemical Agents or Other Less-Than-Lethal Force in Immediate Use of Force Situations”; 1120-AB71 “Inmate Discipline Program: Disciplinary Segregation and Prohibited Act Code Changes”; and 1121-AA89 “Updating Office for Victims of Crime Programs Regulations.”

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)

ATF issues regulations to enforce and implement federal laws relating to the manufacture, importation, sale, and other commerce in firearms and explosives. Such regulations are designed to promote the ATF mission to curb illegal traffic in, and criminal use of, firearms and explosives, and to assist state, local, Tribal, territorial, and other federal law enforcement agencies in reducing violent crime.

ATF will continue, as a priority during fiscal year 2024, to seek modifications to its regulations governing commerce in firearms and explosives in furtherance of these important goals.

The Department is undertaking a rulemaking to amend ATF’s regulations to conform with the changes made by Congress in the Bipartisan Safer Communities Act (Public Law 117-159) and parts of the Consolidated Appropriations Act of 2022 (Public Law 117-109), which included the NICS Denial Notification Act of 2022 (RIN 1140-AA57). The Department has also proposed to amend ATF’s regulations to further clarify what it means for a person to be “engaged in the business” of dealing in firearms, and to have the intent to “predominantly earn a profit” from the sale or disposition of firearms (RIN 1140-AA58). ATF is undertaking an amendment to 27 CFR part 555 to require that persons who store explosive materials annually notify the local authority that has jurisdiction for fire safety in the locality in which the explosive materials are being stored of the type, quantity, and location of each site where the explosive materials are being stored (RIN 1140-AA51).

Bureau of Prisons (BOP)

BOP issues regulations to enforce the Federal laws relating to its mission: to protect public safety by ensuring that federal offenders serve their sentences of imprisonment in facilities that are safe, humane, cost-efficient, and appropriately secure, and to provide reentry programming to ensure their successful return to the community.

The First Step Act (FSA) of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (2018) has brought a host of regulatory changes for BOP. To date, BOP has successfully enacted FSA-related regulations (1) to enable eligible inmates to earn Time Credits towards prerelease custody or early transfer to supervised release, and (2) to modify the amount of Good Time Credit to which eligible inmates are entitled. BOP's next FSA-related regulatory measure involves publishing a Notice of Proposed Rulemaking (NPRM) titled the *Reservation of Funds for Reentry Under the First Step Act*. This rule proposes to implement a specific FSA provision requiring BOP to reserve a portion of the compensation inmates would otherwise receive for working to assist these inmates with costs associated with release from prison. BOP anticipates the NPRM's publication in the Federal Register by the end of 2023.

Another important BOP regulatory measure involving management of inmate funds is the Inmate Financial Responsibility Program (IFRP). On January 10, 2023, BOP published an NPRM titled *Inmate Financial Responsibility Program: Procedures*, which proposes to withhold a portion of inmate work pay and money received by outside sources in order to pay restitution obligations toward victims and satisfy other lawful obligations. Specifically, the rule proposes withholding 75% of all community-source deposits in inmates' commissary account; withholding 50% of pay for inmates in grades 1 through 4 of UNICOR; withholding 25% of pay for inmates in grade 5 of UNICOR and inmates receiving performance pay for institution work; removing two penalties for failure to participate in the program; and adding one penalty for an inmate's refusal to participate. BOP continues to carefully review and thoughtfully consider the 1,300 public comments received in response to the NPRM.

In addition, BOP continues to actively pursue several proposed rules to update the inmate

discipline program; revise technical sections of the regulation regarding filing of tort claims; clarify use of force policy for less-than-lethal munitions; and modify clinical guidelines related to infectious disease testing for affected inmates. Finally, BOP continues to explore procedural avenues to finalize interim final rules related to, for example, (1) exceptions to the filing requirements for certain administrative remedies, and (2) calculation of educational good time credit for eligible District of Columbia inmates.

Civil Rights Division (CRT)

CRT works to uphold the civil and constitutional rights of all persons in the United States, particularly some of the most vulnerable members of our society. Consistent with this mission, CRT plans to engage in five separate rulemakings on disability rights.

First, CRT plans to adopt technical standards for public entities' websites under title II of the Americans with Disabilities Act (ADA) to help public entities meet their existing ADA obligations to ensure their websites are accessible to people with disabilities (RIN 1190-AA79). The Department issued a Notice of Proposed Rulemaking on this topic in August 2023. To promote public engagement with the rulemaking, the Department also made available a fact sheet providing a plain language summary of the proposed rule. The fact sheet is intended to help the public get acquainted with the proposal so that the proposed rule feels more navigable and so that providing public comments feels more approachable. These resources were posted on the Department's www.ada.gov website with information about how to submit comments. They were also posted on a webpage created by HHS's Administration for Community Living to track rulemakings implementing non-discrimination requirements protecting people with disabilities. CRT also held a number of listening sessions to provide an overview of the proposal and hear the perspectives of a variety of stakeholders including disability groups, State and local government groups, and others. Second, CRT plans to amend the current DOJ regulation under section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability in programs and activities conducted by an executive agency, to bring it up to date (RIN 1190-AA73). Third,

CRT will propose standards that address the accessibility of medical diagnostic equipment under title II of the ADA (RIN 1190-AA78). Fourth, CRT intends to propose requirements for pedestrian facilities in the public right-of-way, such as sidewalks and crosswalks, covered by part A of title II of the ADA that are consistent with the Access Board's minimum Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way to help public entities meet their existing ADA obligations to make those facilities accessible (RIN 1190-AA77). Last, CRT plans to publish an advance notice of proposed rulemaking seeking public input on possible revisions to its ADA regulations to ensure the accessibility of equipment and furniture in public entities and public accommodations' programs and services (RIN 1190-AA76).

Drug Enforcement Administration (DEA)

DEA is the agency primarily responsible for coordinating the drug law enforcement activities of the United States and also assisting in the implementation of the President's National Drug Control Strategy. DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Controlled Substances Import and Export Act (21 U.S.C. 801-971), as amended, collectively referred to as the Controlled Substances Act (CSA).

DEA's mission is to enforce the controlled substances laws and regulations of the United States and bring to the criminal and civil justice system those organizations and individuals involved in the growing, manufacture, or distribution of controlled substances and listed chemicals appearing in or destined for illicit traffic in the United States. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States.

Pursuant to its statutory authority, DEA intends to continue with the following priority regulation that appeared on the Fall 2022 Unified Agenda:

DEA published a Notice of Purposed Rulemaking (NPRM) on *Telemedicine Prescribing of*

Controlled Substances when the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation, in March of 2023, and received a large volume of public comments. DEA then published a Temporary Rule on May 10 to extend the pandemic-era flexibilities through November 11, 2023. On October 10, 2023, DEA published a second Temporary Rule to further extend the pandemic-era flexibilities through December 31, 2024. DEA is considering a new NPRM to promulgate effective regulations responsive to the general public and industry concerns. DEA may propose a regulation that would authorize the issuance of registrations for telemedicine, and to prescribe the circumstances in which they may be obtained and used (RIN 1117-AB40).

DEA also intends to publish a proposed regulation to amend the reporting requirements found at 21 CFR 1310.05(b)(2) mandating notification to DEA of domestic transactions involving tableting and encapsulating machines 15-days before the seller ships the machine. The draft regulation also proposes to amend the definitions of a “tableting machine” and an “encapsulating machine” to include “parts thereof.” Finally, the draft regulation seeks to modernize customer verification requirements for transactions and proposes modifications to DEA Form 452 to improve tracking of transactions of tableting and encapsulating machines (RIN 1117-AB80).

In support of its regulatory function, DEA regularly engages with the registrant community, stakeholders, and the public at large. DEA launched “Operation Engage” for its field offices to connect and collaborate with the communities they serve through local partnerships to implement strategies and activities regarding drug use prevention and education as well as bridging public safety and public health efforts to help lower drug overdose deaths. DEA also routinely interacts and engages with registrants by developing programs and presenting topics of interest in webinar sessions, industry meetings, and conferences. These outreach events facilitate open dialogues with stakeholders and allow DEA an opportunity to better understand new and upcoming issues faced by the registrant community.

DEA also plans on improving and broadening community engagement and advancing participation of underserved communities by partnering with trusted members and leaders in the

community, not-for-profit organizations, and patient advocacy groups, and by developing in-person and virtual listening sessions.

Based on the feedback, comments, and industry concerns received from registrants, stakeholders, and the public during presentations and routine engagement, DEA makes informed decisions to evaluate the need to update existing regulations or identify new ones that should be proposed. DEA will continue to broaden its public engagement to support the development of future regulatory actions.

Executive Office for Immigration Review (EOIR)

EOIR's primary mission is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the nation's immigration laws. Under delegated authority from the Attorney General, EOIR conducts immigration court proceedings and appellate reviews. Immigration judges in EOIR's Office of the Chief Immigration Judge adjudicate cases to determine whether noncitizens should be removed from the United States or whether they are eligible for relief from removal. The Board of Immigration Appeals (BIA) has nationwide jurisdiction over appeals from decisions of immigration judges, as well as other matters specified by regulation. In addition, EOIR also conducts administrative hearings involving immigration-related employment practices, discrimination claims, and document fraud cases. Accordingly, the Department of Justice has a significant role in the administration of the nation's immigration laws. The Attorney General also is responsible for civil litigation and criminal prosecutions relating to the immigration laws.

EOIR is working to revise and update the regulations to increase administrative efficiency, while also safeguarding fairness interests. Specifically, EOIR has issued a proposed rule that would restore longstanding procedures in place before a prior rule (RIN 1125-AA96), including administrative closure, and clarify and codify other established practices. The rule will promote the efficient and expeditious adjudication of cases, afford immigration judges and the Board flexibility to efficiently allocate their limited resources, and protect due process for parties before

immigration judges and the Board.

EOIR and the Department of Homeland Security (DHS) are also drafting a joint proposed rule that would provide clarity and uniformity to DHS custody procedures and EOIR bond hearing procedures (RIN 1125-AB27). The Departments believe this rulemaking will help address litigation issues and resolve varying judicial interpretations of the existing custody and bond hearing procedures among Federal circuit courts.

Additionally, EOIR is developing several regulations related to the asylum system. For example, EOIR and DHS intend to propose joint rules to withdraw prior rules that created obstacles to asylum, such as RIN 1125-AB08, which proposes to rescind a pandemic-era rule that categorically barred asylum for individuals fleeing political, religious, or other persecution solely based on their passage through a country in which a communicable disease is prevalent, regardless of whether an individual was exposed to the disease or was vaccinated, and RIN 1125-AB22, which proposes to rescind or modify regulatory revisions made by a prior rule to procedures for asylum and withholding of removal.

Federal Bureau of Investigation (FBI)

The FBI is responsible for protecting and defending the United States against terrorist and foreign intelligence threats, upholding and enforcing the criminal laws of the United States, and providing leadership and criminal justice services to federal, state, local, tribal territorial, and international agencies and partners. Only in limited contexts does the FBI rely on rulemaking.

For example, the FBI drafted a proposed rule to establish the criteria for use by a designated entity in deciding fitness as described under the Child Protection Improvements Act (CPIA), 34 U.S.C. section 40102, Public Law No. 115-141, div. S. title I, section 101(a)(1), Mar. 23, 2018, 132 Stat. 1123.

The CPIA requires that the Attorney General, by rule, establish the criteria for use by designated entities in making a determination of fitness described in subsection (b)(4) of the Act concerning whether the provider has been convicted of, or is under pending indictment for, a

crime that bears upon the provider's fitness to have responsibility for the safety and wellbeing of children, the elderly, or individuals with disabilities and shall convey that determination to the qualified entity. Such criteria shall be based on the criteria established pursuant to section 108(a)(3)(G)(i) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (34 U.S.C. section 40102 note) and section 658H of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. section 9858f).

The FBI is also drafting rules to implement the Bipartisan Safer Communities Act of 2022 (BSCA), 28 U.S.C. section 534, 34 U.S.C. section 40901, and 34 U.S.C., Subt. IV, ch. 411, Refs. & Annos., Public Law No. 117-159, div A, title II, sections 12001(a) and 12004(h), June 25, 2022, 136 Stat. 1313 and the National Instant Criminal Background Check System (NICS) Denial Notification Act (NDNA) of 2022, 18 U.S.C. 921, 18 U.S.C. sections 925B through 925D, Public Law No. 117-103, div. W, title XI, sections 1101 through 1103, March 15, 2022, 136 Stat. 919.

In accordance with the BSCA, the FBI will propose regulatory amendments to include, but not be limited to: authorizing and establishing the process for federal firearm licensees (FFLs) to receive access to records of stolen firearms maintained in the FBI's National Crime Information Center to verify if a firearm offered for sale to the FFL has been reported stolen; authorizing, and establishing the process for, FFLs to use NICS for the purpose of voluntary background checks of certain current and/or prospective employees of the FFL; and establishing the process when NICS has been contacted for the prospective transfer of a firearm to a person under the age of 21. For NICS transactions involving persons under the age of 21, proposed regulation amendments will address, but may not be limited to, the BSCA provisions regarding: (A) the application of a delay, up to the tenth business day, if cause exists to further investigate a possibly disqualifying juvenile record; (B) the required collection (and any purge/retention) of residential address information submitted by an FFL so the FBI may comply with the expanded background checks of such persons; and (C) the process for conducting the expanded background checks to determine if certain entities where such persons reside (the state criminal history repository or juvenile justice

information system, the state custodian of mental health adjudication records; and local law enforcement) have records establishing “cause” that such persons have possibly disqualifying juvenile records under 18 U.S.C., section 922(d).

The NDNA mandates that, when the FBI denies a firearm transfer during a NICS transaction, the Attorney General is to report various information about that denial to local law enforcement authorities in the state or tribe where a firearm was sought for transfer and, if different, the local law enforcement authorities of the state or tribe where the person resides.

“Local law enforcement authority” is defined by the NDNA at 18 U.S.C., section 921(a).

Regulatory amendments will be drafted outlining the process for submitting, and the contents of, such denial notifications, including language similar to the BSCA, addressing the required collection (and purge/retention) of a prospective transferee’s residential address so the FBI may contact the proper local law enforcement authorities should the transaction be denied. Regulatory proposals based on the NDNA will also address denial notifications being sent to prosecution authorities in the jurisdiction where the firearm was sought and circumstances where authorities need to be updated that a person who was the subject of a denial notification has subsequently been determined to not be prohibited. Regulation proposals from the NDNA will also address the Attorney General’s new, annual report to Congress concerning denial notifications, and related statistics, from the previous year.